

MAY 16 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LI JUN SONG,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 04-73116

Agency No. A77-292-832

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted May 9, 2008
Pasadena, California

Before: NOONAN, W. FLETCHER, and GOULD, Circuit Judges.

Li Jun Song, a native and citizen of China, petitions for review of a final order of removal issued by the Board of Immigration Appeals (“BIA”), which affirmed without opinion the adverse credibility determination of the Immigration

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Judge (“IJ”).¹ We have jurisdiction pursuant to 8 U.S.C. § 1252, and we grant Song’s petition for review, vacate the BIA’s decision, and remand for a renewed credibility determination, *see Garrovillas v. INS*, 156 F.3d 1010, 1016 (9th Cir. 1998).

Song argues that the IJ’s adverse credibility determination is not supported by substantial evidence. We uphold an IJ’s credibility determination “unless the evidence *compels* a contrary result.” *Don v. Gonzales*, 476 F.3d 738, 741 (9th Cir. 2007). “When the IJ denies asylum based ‘on an adverse credibility determination, [s]he must provide specific, cogent reasons to support [her] determination . . . [which] cannot be peripheral, but rather must go to the heart of petitioner’s claim.’” *Id.* (quoting *Desta v. Ashcroft*, 365 F.3d 741, 745 (9th Cir. 2004)) (third alteration in original). We hold that the IJ based her adverse credibility determination on improper grounds.

The IJ’s adverse credibility determination was based in part on the IJ’s conclusion that Song provided new information on cross-examination that he did not discuss in direct examination. “[T]he mere omission of details is insufficient to uphold an adverse credibility finding.” *Bandari v. INS*, 227 F.3d 1160, 1167 (9th

¹Because the parties are familiar with the facts and procedural history, we do not restate them here except as necessary to explain our disposition.

Cir. 2000). Moreover, “a general response to questioning, followed by a more specific, consistent response to further questioning is not a cogent reason for supporting a negative credibility finding.” *Kaur v. Ashcroft*, 379 F.3d 876, 887 (9th Cir. 2004). Here, the IJ reprimanded Song during direct examination when he attempted to give additional detail in answers. It was improper for the IJ to find Song lacking in credibility because he later was permitted to give and gave greater, consistent detail on cross-examination.

The IJ also based her adverse credibility determination in part on her conclusion that inconsistencies existed between Song’s oral testimony at the merits hearing and the written declaration that he submitted with his asylum application. The IJ erred in basing the adverse credibility determination on Song’s use of the word “van” in his oral testimony but “car” in his written declaration because the type of vehicle used by Chinese police to escort Song from a political demonstration to jail is a minor detail that does not go to the heart of his asylum claim. *See Mendoza Manimbao v. Ashcroft*, 329 F.3d 655, 660 (9th Cir. 2003).²

The IJ also found Song’s oral testimony to be inconsistent with his written

²Both “car” and “van” come from the same Mandarin root word—“chē.” *See* Mandarin-English Dictionary, <http://www.ljn.com/chinese/chieng.html>. Song testified at the merits hearing through a translator, and it is possible that the use of the two words is a result of translation error, which cannot support an adverse credibility determination. *See Mendoza Manimbao*, 329 F.3d at 662.

declaration because Song failed to testify, as he had written in his declaration, that he and his fellow student protestors put up posters during a 1989 demonstration. Song's failure at the merits hearing to elaborate on the events involved in the 1989 demonstration to the same extent that he did in his written declaration is not an inconsistency in his statements, and it cannot be used by the IJ to support an adverse credibility determination. *See Bandari*, 227 F.3d at 1167.

The administrative record does not support the IJ's conclusion that nonpolitical discrepancies existed between Song's statements during the two airport interviews.

Given that each of the reasons proffered by the IJ to support an adverse credibility determination fails, the IJ erred in construing Song's sister's absence as a witness during the merits hearing as supporting an adverse credibility determination. *See Kaur*, 379 F.3d at 890 (concluding that corroboration is not required where each of the grounds identified by the IJ to support an adverse credibility finding fails).

We hold that the record does not support the IJ's adverse credibility determination, and we therefore vacate the credibility finding. *See Garrovillas*, 156 F.3d at 1016. "On remand, if the BIA concludes that [Song's] testimony is not credible, it must articulate with specificity any inconsistencies or evasions it finds

in his testimony, must address in a reasoned manner the explanations that [he] offers for the perceived inconsistencies or evasions, and must take expressly into consideration” the IJ’s demands at the merits hearing that Song answer only the questions asked of him and provide no additional detail. *Id.*

PETITION FOR REVIEW GRANTED.